

NOT FOR PUBLICATION - FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

RUSSELL ROBINSON,

Appellant,

V.

GOVERNMENT OF THE VIRGIN ISLANDS,

Appellee.

)

)

) D.C. Crim. App. No. 2000-580

)

) Re: Terr. Ct. Traffic Nos.

)

7606/2000

)

7607/2000

)

7608/2000

)

7609/2000

;

7610/2000

On Appeal from the Territorial Court of the Virgin Islands

Considered: November 8, 2002

Filed: December 12, 2002

Amended: December 19, 2002

BEFORE : **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **EDGAR D. ROSS**, Judge of the Territorial Court, Sitting by Designation

ATTORNEYS :

Stephen A. Bruschi, Esq.

Territorial Public Defender

St. Thomas, U.S.V.I.

Attorney for Appellant,

Joel H. Feld, Esq.

Assistant Attorney General

Department of Justice

St. Thomas, U.S.V.I.

Attorney for Appellee.

OPINION OF THE COURT

PER CURIAM.

Russell Robinson appeals his conviction for reckless driving in violation of title 20, section 492 of the Virgin Islands Code, and disregarding a red light in violation of title 20, section 491 of the Virgin Islands Code. On appeal, he argues that his conviction should be overturned because it is unsupported by the evidence. Because evidence in the record supports the trial judge's factual findings, this Court will affirm his conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

Russell Robinson ["Robinson" or "appellant"] was charged with one count of violating section 492, operating a motor vehicle in a reckless manner, and four counts of violating section 491, disregarding a red light.

At a bench trial, the government presented the testimony of police officer Ana Jimenez ["Jimenez"]. Jimenez testified that on June 14, 2000 at approximately 1:00 a.m., while on patrol on Veteran's Drive, she observed a white four door vehicle with the license plate OBEAH 1 pass her police car and run a red light. (App. 19-21)

Jimenez testified that she and her partner, Officer Gilkes, pursued the vehicle as it turned right on Crown Mountain Road and proceeded towards Contant Knolls. The officers then lost sight

of the vehicle. (App. 23-27). The officers were then notified that OBEAH 1 was sighted in the Old Mill parking lot. (App. 28).

After speaking with the Old Mill security guard, Jimenez questioned the appellant who stated that he was not driving the vehicle and that his brother was driving. The officer searched the area but did not locate appellant's brother. (App. 30-33). Officer Jimenez then issued appellant the traffic tickets.

Corporal Chinnery testified that he examined the vehicle in the Old Mill parking lot and that it was very hot, indicating it had just been running. Chinnery further testified that he could smell the rubber from the tires. (App. 63).

Calford Charleswell, security supervisor at the Old Mill, testified that he did not see who exited OBEAH 1, but he did see appellant walking from the area where the vehicle was parked. (App. 83-84). Additionally, he testified that he did not see anyone else walking away from that area. Charleswell also testified that appellant entered alone, and that he did not see Appellant's brother.

Based on this testimony, the trial judge found the appellant guilty on all five counts. (App. 208-213). This timely appeal followed.

II. DISCUSSION

On appeal, Robinson avers that the conviction of reckless driving and disregarding a red light is unsupported by evidence. (Blue Brief at 5-6). The government counters that the trial judge's factual findings were not clearly erroneous and that the evidence was sufficient to find the defendant guilty beyond a reasonable doubt. (Red Brief at 8-12).

This Court has jurisdiction to consider the judgments and orders of the Territorial Court in criminal cases. 4 V.I.C. § 33; Section 23A of the Revised Organic Act of 1954.¹ A trial court's findings of fact are reviewed for clear error. 4 V.I.C. § 33. "An appellate court is 'circumscribed by the deference it must give to decisions of the trier of the fact, who is usually in a superior position to appraise and weigh the evidence.'" *Jackson v. United States Steel Corp.*, 624 F.2d 436, 439 (3d Cir. 1980) (quoting *Zenith Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123 (1969)). "Clear error exists when, giving all deference to the opportunity of the trial judge to evaluate the credibility of witnesses and to weigh the evidence, we are 'left with a definite and firm conviction that a mistake has been committed.'"

¹ See Revised Organic Act of 1954 § 23A, 48 U.S.C. § 1613a. The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2001), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2001) (preceding V.I. CODE ANN. tit. 1).

Arroyo v. Bradshaw, Civ. Nos. 1998-159, 363-1998, 2000 WL 1738388, at *1 (D.V.I. App. Div. June 1, 2000) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 573 (1985)).

The appellant attacks his conviction on the basis that the evidence presented at trial was insufficient to prove his guilt beyond a reasonable doubt. When considering a sufficiency of evidence challenge after a conviction, we employ the following standard of review:

[A]n appellate court must sustain the verdict of a jury if there is substantial evidence, viewed in the light most favorable to the Government, to uphold the jury's decision. In determining whether evidence is sufficient, we will not weigh evidence or determine the credibility of witnesses. Appellate reversal on the grounds of insufficient evidence should be confined to cases where the failure of the prosecution is clear. The evidence need not be inconsistent with every conclusion save that of guilt, so long as it establishes a case from which a jury could find the defendant guilty beyond a reasonable doubt. A defendant challenging the sufficiency of the evidence bears a heavy burden.

United States v. Carr, 25 F.3d 1194, 1201 (3d Cir. 1996)
(citations omitted).

The fact that the evidence is circumstantial does not make it less probative on the issue of guilt in a criminal prosecution. *Government of the Virgin Islands v. Williams*, 739 F.2d 936, 940 (3d Cir. 1984).

Here, the evidence presented, although circumstantial, was sufficient for the trial judge to conclude that the appellant was

guilty beyond a reasonable doubt. Robinson owned the vehicle. He was seen coming from the area where the vehicle was parked and entering the club alone. Appellant's brother was not found upon a search of the Old Mill area, which does not support Robinson's testimony that his brother had been driving the vehicle when the traffic violations at issue occurred. The trial court's finding that appellant was the driver of the car is supported by sufficient evidence and is not clearly erroneous.

The trial judge evaluated the testimony of the witnesses, and found the government's witnesses credible. Because the judge's findings of fact are supported by the record, this Court affirms Robinson's conviction. An appropriate order follows.

DATED this 12th day of December, 2002.

ATTEST:

WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
APPELLATE DIVISION**

RUSSELL ROBINSON,)	
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Appellant,)	
)	D.C. Crim. App. No. 2000-580
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GOVERNMENT OF THE VIRGIN ISLANDS,)	Re: Terr. Ct. Traffic Nos.
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BEFORE: **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **THOMAS K. MOORE**, Judge of the District Court of the Virgin Islands; and **EDGAR D. ROSS**, Judge of the Territorial Court, Division of St. Croix, Sitting by Designation

ATTORNEYS:

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Attorney for Appellant,

Joel H. Feld, Esq.
Assistant Attorney General
Department of Justice
St. Thomas, U.S.V.I.
Attorney for Appellee.

ORDER OF THE COURT

PER CURIAM.

AND NOW, this 12th day of December, 2002, having considered the parties' submissions and arguments, and for the reasons set forth in the Court's accompanying Opinion of even date, it is hereby

ORDERED that the judgment of the Territorial Court is **AFFIRMED**.

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:
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Honorable Thomas K. Moore
Honorable Edgar D. Ross
Honorable Geoffrey W. Barnard
Honorable Jeffrey L. Resnick
Judges of the Territorial
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